IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No. 43 of 2006
In
COMPANY APPLICATION No. 46 of 2006
In
COMPANY APPLICATION No. 256 of 2003
In
COMPANY APPLICATION No. 67 of 2003
With
O.J. CIVIL APPLICATION No. 184 of 2006

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SHARAD BANSILAL VAKIL - Appellant(s)
Versus
M/S. JAI MAHAKALAY INFRASTRU- CTURE PVT. LTD. & 3 - Opponent(s)

==========

Appearance :

MR MIHIR J THAKORE SR ADV with MR PRAKASH K JANI for Appellant(s) : 1,MR SB VAKIL for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1 - 2, 4,
OFFICIAL LIQUIDATOR for Opponent(s) : 3,
MR SAMIR B BUNDELA for Opponent(s) : 3,

==========

CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 26/09/2006

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE MD SHAH)

This appeal is filed by the appellant – Shri Sharad Bansilal Vakil, Senior Advocate of this court under Section 483 of the Companies Act, 1956 and also under Clause 15 of the Letters Patent for expunging the remarks made by Justice R.S.Garg in paras 3, 4 and 10 of his order dated 22.2.2006 in Company Application No.46 of 2006.

Relevant portion of para 3 of the order dated 22.2.2006 is as under :-

> “.....It is not in dispute or at least for me, it is not in dispute that his mobile phone started ringing in the Court and he started waling out; I called him and when I asked him as to why his mobile phone was ringing in the Court and was not kept on

> silent mode, without showing any remorse or expressing any regrets, he had stated that he was to take medicine at 12:30 pm, therefore, he had set an alarm for 12:30 pm. When this court asked him that why there was no remorse or regrets, and, in such an event, why the Court should not issue a Notice. By his conduct, he exhibited as if he was ready and willing to accept the Notice....”

Para 4 of the order dated 22.2.2006 reads as under :-

> “From the newspapers, I have also learnt that the Bar Association says that I knew the fact that Mr.S.B.Vakil is a heart patient. Unfortunately, this is a blatant lie. I have no personal connections with Mr.S.B.Vakil, nor I know him personally. He is a respected Counsel in the Court and as a Counsel only, I know him.”

Relevant portion of para 10 of the order dated 22.2.2006 is as under :-

> “....In the case of Mr.S.B.Vakil, a word of regret would have been sufficient, but, instead of expressing his regrets, he retaliated in the matter and must have expressed his resentment before the Bar, and thereafter, such a resolution was passed. It is for the Members of the Bar to look into their conduct before finding fault with the Judge”.

Learned Senior Advocate Mr.Mihir Thakore for the

appellant submitted that notice of contempt issued against the appellant is already discharged by the Division Bench of this court (Coram : J.M.Panchal and Abhilasha Kumari, JJ.) on 12.7.2006, therefore, the disparaging remarks made in paras 3, 4 and 10 of the order dated 22.2.2006 (Annexure-A) passed by the learned Judge in Company Application No.46 of 2006 be expunged. He further submitted that the disparaging remarks were made by the learned Company Judge without giving any opportunity to the appellant, who was neither present nor directly or indirectly connected with the Company Application No.46 of 2006 in which the learned Judge passed an order. Therefore, the same may be expunged from the order. In support of his submission, made on merits, Senior Advocate Mr.Thakore relied on the following three judgments of the Hon'ble Supreme Court;

1) AIR 1986 SC 819 Niranjan Patnaik v. Sashibhushan Kar

2) AIR 1986 SC 1080 – Advocate General of Bihar v. The High Court of Judicature at Patna

3) AIR 1997 SC 1436 – S.K.Viswambaran v. E.Koyakunju

It may be stated that this appeal is filed by the appellant both under Section 483 of the Companies Act as well as Clause 15 of the Letters patent.

Section 483 of the Companies Act reads as under:-

> "483. Appeals from orders – Appeals from any order made, or decision given, in the matter of the winding up of a company by the Court shall lie to the same Court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction."

Clause 15 of the Letters Patent reads as under:-

> "15. Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction – And We do further ordain that an appeal shall lie to the said High Court of Judicature at [Madras], [Bombay], Fort William in Bengal from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court and not being an order made in the exercise of a revisional jurisdiction, and not being a sentence or order passed or made in exercise of the power of superintendence under the provisions of section 107 of the Government of India Act, or in the exercise of criminal

> jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, and that notwithstanding anything herein before provided, an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, [on or after the first day of February 1929] in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our heirs or successors in Our or Their Privy Council".

In our considered opinion, appeal cannot be filed both under Section 483 of the Companies Act and under Clause 15 of the Letters Patent. It may be either under Section 483 of the Companies Act or under Clause 15 of the Letters Patent.

This appeal is filed against the remarks made by the learned Judge in paras 3, 4 and 10 of his order dated 22.2.2006. Therefore, moot question is, whether the appeal either under Section 483 of Companies Act or under Clause 15 of the Letters Patent against the remarks made by the learned Judge in paras 3, 4 and

10 of his order dated 22.2.2006 passed in Company Application No.46 of 2006 would be maintainable or not?

Bare reading of Section 483 of the Companies Act and Clause 15 of the Letters Patent reproduced herein above would go to show that no appeal would lie either under section 483 of the Companies Act or under Clause 15 of the Letters Patent against the observations or disparaging remarks made by the learned Judge in Company Application No.46 of 2006.

Relying on the judgments of the Hon'ble Supreme Court in cases of (1) **Employer in Relation to Management of Central Mine Planning and Design Institute Ltd. V/s. Union of India and another reported in AIR 2001 SC 883** and (2) ***The State of Uttar Pradesh V/s. Mohammad Naim reported in AIR 1964 SC 703***, the Division Bench of this court, in its recent decision, in case of ***S.P.Majmudar, Advocate v. State of Gujarat & Anr. reported in [2006] 12 Gujarat High Court Judgments (550)*** has clearly held that intra-court appeal under Clause 15 of the Letters

Patent against the remarks made by the learned Single Judge in his order would not be maintainable before this court.

In view of the above settled legal position of law, we are of the considered opinion that no appeal would lie before this court against mere observations or disparaging remarks made by the learned Judge in his order dated 22.2.2006. Therefore, only on the ground of its maintainability, this appeal is required to be dismissed.

Once we come to the conclusion that this appeal filed against observations or disparaging remarks made by the learned Single Judge in his order dated 22.2.2006 in Company Application No.46 of 2006 is not maintainable, then all the aforesaid three decisions of the Hon'ble Supreme Court rendered on merits in SLPs. cited by the learned Senior Advocate Mr.Mihir Thakore for the appellant are not required to be considered and dealt with in the order.

In view of the above discussion, this appeal

fails and is hereby dismissed, with no order as to costs.

As the main appeal is dismissed, O.J. Civil Application No.184 of 2004 for stay, is also dismissed.

(B.J.SHETHNA, J.)

(M.D.SHAH, J.)

*pvv